

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2014 of 2013 (O/M)
Date of decision : 6.4.2015

HDFC ERGO General Insurance Co. Ltd. Appellant

Versus

Akbar Khan and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Nitin Mittal, Advocate, for,
Mr. Subhash Goyal, Advocate, for the appellant.

Mr. Surinder Dager, Advocate, for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

In this appeal, the appellant-Insurance Company has challenged the order dated 12.12.2012, passed by the Commissioner under the Employee's Compensation Act, 1923, Mewat, (in short 'the Commissioner') vide which the Commissioner awarded a compensation of Rs. 7,24,239/- to the applicant-injured including interest and case expenses.

The brief story, which needs to be noticed for disposal of the present appeal, is that the applicant-injured (respondent No. 1 herein) was working as a driver on vehicle No. RJ-02-GA-1719 under the owner Farun Khan (respondent No. 2 herein) on a monthly salary of Rs. 4,500/-. On 21.6.2009, the said vehicle met with an

accident. Applicant-injured suffered multiple injuries on his person and fracture of the leg. He was shifted to Government Hospital, Munirabad and was also got treated at Government Hospital, Mandi Khera and private hospitals. During evidence, he also produced disability certificate (Ex. P1) showing that the permanent disability is assessed at 30%. The Commissioner, however, took the functional disability at 100% and accordingly awarded the compensation.

I have heard the learned counsel for the appellant-Insurance Company, learned counsel for respondent No. 1 (applicant-injured) and have also carefully gone through the file.

Learned counsel for the appellant-Insurance Company has vehemently argued that the Commissioner has erred in assessing the loss of earning capacity and functional disability at 100%. It has been argued that the disability certificate (Ex. P1) shows that the permanent disability was only 30%. Even to prove the disability of 30%, no doctor was examined. Learned counsel for the appellant has relied upon the authority of the Hon'ble Supreme Court in Raj Kumar Versus Ajay Kumar and another, (2011) 1 Supreme Court Cases 343. However, it comes out that the Commissioner assessed the loss of earning capacity at 100%, while making the following observations :-

“ In view of the above discussion as well as relying upon the ratio of the cases law cited by the counsel for the applicant and I physically seen the applicant who appeared in the Court that he was unable to walk without the help of stick, I am of the opinion that the

applicant has lost his 100% earning capacity as he is unable to do the work of driver, which he was doing prior to the accident. I held so in the case.”

It goes to show that in addition to relying upon the disability certificate (Ex.P1), issued by the doctor, the Commissioner himself personally saw the applicant-injured in the Court and found that he was unable to walk without the help of stick. The applicant-injured was working as a driver. That would mean that when he cannot walk properly, he cannot drive the vehicle also. Therefore, the assessment of the Commissioner that the loss of earning capacity is 100% cannot be disputed.

The authority of the Hon'ble Supreme Court in Raj Kumar's case (supra) is distinguishable from the facts of present case. In Raj Kumar's case (supra), there was no observation of the authority below that he had himself seen the applicant to assess the loss of earning capacity.

In the given circumstances, I am of the view that the loss of earning capacity was rightly assessed at 100% and compensation was accordingly assessed and granted. No other ground has been pressed.

In view of the matter, I do not find any merit in the present appeal and the same is accordingly dismissed.

(KULDIP SINGH)
JUDGE

6.4.2015
sjks